

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>UNITED STATES OF AMERICA</b>	:	<b>CRIMINAL NO.</b> _____
	:	
v.	:	
	:	<b>DATE FILED:</b>
<b>BITNER BROTHERS CONSTRUCTION COMPANY, INC.</b>	:	<b>VIOLATIONS:</b>
	:	<b>15 U.S.C. § 2615(b) (1 count)</b>
	:	<b>18 U.S.C. § 2 (aiding and abetting)</b>

**INFORMATION**

The United States Attorney for the Middle District of Pennsylvania charges that:

**Count One**

**(Toxic Substances Control Act – Failure to follow safe work practices to  
reduce a lead hazard exposure)**

**Introduction**

1. At all times material to this Information, Defendant BITNER BROTHERS CONSTRUCTION COMPANY, INC. (Bitner Brothers), located at 405 North East Street, Carlisle, Pennsylvania, was an experienced construction contractor certified by the U.S. Environmental Protection Agency as a lead renovator since October 2010. Charles H. Bitner, Jr. (Bitner, Jr.), the President and Owner of Bitner Brothers, was certified as a lead renovator by the U.S. Environmental Protection Agency since October 2010.

2. In July 2016, Bitner Brothers executed a contract with an owner of a six-apartment residential complex located at 2801 North Second Avenue, Harrisburg, Pennsylvania, built before 1978. The work contemplated the removal of 10 old windows, and the installation of 10 new windows into existing openings. The requirements of the Toxic

Substances Control Act's Renovation, Repair and Painting Rule (TSCA RRP), 15 U.S.C. §§ 2601-2695d, for lead exposure reduction did not apply at that time, since window replacements are considered minor repairs.

3. On or about February 9, 2017, Bitner Brothers' employees began the window replacement job. The employees discovered that the replacement windows were larger than the old windows and could not be inserted into the existing openings. The employees needed to enlarge the window openings by cutting through painted-wall surfaces in two apartments. The window replacement job was now considered a renovation subject to the RRP Rule. 40 C.F.R. § 745, Subpart E.

4. The RRP Rule required Bitner Brothers to conduct the work in accordance with safe work practices, unless Bitner Brothers confirmed that lead-based paint was not present. Bitner Brothers did not conduct any lead testing prior to the beginning of the job. 40 C.F.R. § 745.85.

5. The RRP Rule required Bitner, Jr., a certified renovator, to provide the on-the-job training regarding lead renovations to his uncertified workers. Bitner, Jr. was not present on-the-job, nor did he provide any training to his uncertified workers on safe work practices. 40 C.F.R. § 745.90(b).

6. On or about February 9, 2017, Bitner Brothers' employees began the renovations by cutting with a power grinding into the interior paint surfaces of the apartments in order to enlarge the openings for the replacement windows. The renovations were conducted without setting up a containment system equipped with a HEPA vacuum to reduce exposure to lead hazards, a required safe work practice. 40 C.F.R. 745.85(a)(3)(ii)

7. On or about February 9, 2017, Bitner Brothers' employees conducted the renovations while the apartment occupants were present, including two children and two infants between the ages of four months and five years. The occupants observed uncontained balls of dust generated during the power grinding.

8. On or about February 9, 2017, Bitner, Jr. was summoned to the apartment complex to inspect cracks in the replacement window frames, and observed that the interior painted wall surfaces had been cut into to install the replacement windows in two apartments.

9. On May 22, 2017, EPA took five paint chip samples from inside the two apartments where the renovations were done. EPA's sample analyses confirmed the presence of lead in all five samples ranging from less than 80 parts per million (ppm) to 320 ppm.

10. EPA's confirmation of the presence of lead and the way the windows were installed required that the renovations be conducted in accordance with the TSCA RRP Rule work practice regulations to reduce lead exposure.

**The Toxic Substances Control Act**

11. The Toxic Substances Control Act (TSCA) 15 U.S.C. §§ 2601-2695d, created a two-tiered system for evaluating and regulating chemical substances to protect against unreasonable risks to human health and the environment. By enacting TSCA in 1976, Congress empowered the U.S. Environmental Protection Agency (EPA) to regulate the manufacture, distribution in commerce, use, and disposal of chemical substances.

12. Subchapter IV (15 U.S.C. §§ 2681–2692), added in 1992, established a framework for reducing exposure to lead-based paint. This Subchapter directed EPA, OSHA and HUD (now HHS) to promulgate regulations governing lead-based paint. Pursuant to Subchapter IV, EPA promulgated the RRP regulations governing the accreditation of lead-

based paint training programs, the certification of individuals and firms engaged in lead-based paint activities, and the work practice standards for performing such activities, 15 U.S.C. § 2682(a) and (b); 40 C.F.R. §§ 745.220-745.239. Safe work practices are necessary during renovations to control the airborne and settled lead dust. Lead is a known health hazard, causing permanent damage to children, including those under six years of age as the most vulnerable, adults, especially pregnant women, and workers.

13. Under the RRP Rule which became effective on April 22, 2010, contractors performing renovation, repair and painting projects that disturb lead-based paint in homes, child care facilities, and schools built before 1978 must be certified and must follow specific work practices to prevent lead contamination. A renovation is a disturbance of 6 square-feet of a painted surface in a room.

14. A Certified Firm must designate a Certified Renovator to conduct set-up activities; to insure that the renovation is performed in accordance with work practice standards; to verify work and cleanup activities using the cleaning verification procedure; and to train non-certified renovation personnel on-the-job in lead-safe work practices.

15. The work practices for individuals and firms engaged in lead-based paint renovations include set-up practices to contain the work area, prohibit the use of power grinding unless the equipment has shrouds or containment systems and HEPA vacuum attachments to collect dust and debris, and cleanup practices and verification procedures to address the lead-based paint debris and dust.

16. Title 15, United States Code, Section 2615(b) makes it a criminal offense for any person who knowingly or willfully violates any provision of Section 2689 of TSCA. Section



2689 makes it unlawful for any person to fail or refuse to comply with any provision, rule or order issued under Subchapter IV of TSCA, the Lead Exposure Reduction provisions.

**Charging Paragraph**

17. From on or about February 9, 2017 through February 15, 2017, in the Middle District of Pennsylvania, Defendant

**BITNER BROTHERS CONSTRUCTION COMPANY, INC.**

knowingly violated, and aided and abetted and knowingly caused the violation of, applicable work practices enacted pursuant to the Toxic Substances Control Act governing the reduction of lead exposure during renovations at a pre-1978 child occupied residential facility by conducting power grinding without a shroud or containment system equipped with HEPA vacuum of lead-based painted surfaces in violation of Title 15, Sections 2689 and 2615(b).

5-14-18

DATE

  
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WILLIAM BEHE  
ASSISTANT UNITED STATES ATTORNEY

5-14-18

DATE

  
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PATRICIA C. MILLER  
SPECIAL ASSISTANT UNITED STATES ATTORNEY